

## SYD1794

Bench of Magistrates, Minutes of Proceedings Feb 1788 – Jan 1792, State Records N.S.W., SZ765

Murder of a Native Boy

Bench of Magistrates

Collins J.A., **17 October 1794**

[375] Examination of the persons supposed to have murdered a Native Boy at the Hawkesbury, and the Evidence against them.

**ALEXANDER WILSON** says that Robert Forrester informed him that he had shot a native Boy, and that he was induced to it from motives of humanity. The Boy having been previously thrown into the River by the neighbouring settlers, with his hands so tied, that it was impossible he could swim to the opposite side.

**ROBERT FORRESTER** says that a large party of natives having appeared at the back of his Farm he alarmed his neighbours and went out to observe them. That in the road to the natives they met a Native Boy who they supposed was coming in for the purpose of discovering what arms they had. That they made him a prisoner; tied his hands behind his back [376] and delivered him to **MICHAEL DOYLE** to take to his [?].

That he was soon after alarmed by a cry from Doyles that the boy was escaped and had jumped into the River. That he and **TWYFIELD** immediately ran to the river and saw the boy swimming. That he then was prevailed on to shoot the boy by the importunities and testacies of all around. That the boy should get back to the natives and induce them to an attack by discovering there was no more than one musket in the whole neighbourhood. That the boy was not ill treated with his knowledge in any other manner than he was declared, and that the declaration of Wilson as far as it varies from this is false.

**ROGER TWYFIELD** corroborates the foregoing.

Parramatta and .. [378] Murder of a Native Boy, 1794[?] 17 Oct

Respecting the Murder Of a Native Boy

Source: Historical Records of N.S.W., Vol. 2

[329] From the Hawkesbury were received accounts which corroborated the opinion that the settlers there merited the attacks which were from time to time made upon them by the natives. It was now said that some of them had seized a native boy, and, after tying him hand and foot, had dragged him several times through a fire, or over a place covered with hot ashes, until his back was dreadfully scorched, and in that state threw him into the river, where they shot at and killed him. Such a report could not be heard without being followed by the closest examination, when it appeared that a boy had actually been shot when in the water, from a conviction of his having been detached as a spy upon the settlers from a large body of natives, and that he was returning to them with an account of their weakness, there being only one musket to be found among several farms. No [330] person appearing to contradict this account, it was admitted as a truth; but many still considered it as a tale invented to cover the true circumstance, that a boy had been cruelly and wantonly murdered by them.

The presence of some person with authority was becoming absolutely necessary among those settlers, who, finding themselves freed from bondage, instantly conceived that they were above all restrictions; and, being without internal regulations, irregularities of the worst kind might be expected to happen.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the  
Division of Law Macquarie University

SYD1797

Court of Criminal Jurisdiction Minutes of Proceedings, 1788-1815, State Records  
N.S.W, 5/1147B

R. v. Millar

R. v. Bevan

Court of Criminal Jurisdiction

Atkins J.A., **9 or 10 October 1797**

[353] **WILLIAM MILLAR and THOMAS BEVAN:**

Were brought before the Court for that they not having the fear of God before their Eyes but being moved and seduced by the instigation of the desire on or about the sixth day of October in the Thirty fourth year of the Reign of Our Sovereign Lord George the Third now King of Great Britain &c. with force and arms on the North-shore in county aforesaid in and upon a Native commonly known by the name of **TOM ROWLEY** in the peace of God and our said Lord the King then and there being feloniously, willfully and of their malice afore thought did make an assault. And that the said William Millar a certain Gun value 70L then and there charged with Gunpowder and pistol balls of slugs, which given he the said William Millar then and there had and hold to against and upon the said Native then there feloniously, willfully and of his Malice aforethought did shoot and discharge, and that the said Millar with the pistol balls or slugs aforesaid out of the Gun aforesaid then and there by the force of the gunpowder shot and sent forth as aforesaid the afore said Native in and upon the right thigh of him the aforesaid Native then and there with the pistol balls or slugs aforesaid out of the Gun aforesaid by the said William Millar aforesaid shot discharged and sent forth feloniously, willfully and of his malice afore they did strike, penetrate and wound, giving to the said Native one mortal wound , of which wound he languished and languishing did die and that the aforesaid Thomas Bevan then and there [354] feloniously, willfully and of his malice before thought was present aiding, helping aletting, comforting assisting and maintaining the said William Millar the felony and murderer aforesaid in manner and form aforesaid to do and commit against the peace of Out Sovereign Lord the King his Crown and dignity.

Acquitted for want of Evidence.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the  
Division of Law Macquarie University

SYD1799

Court of Criminal Jurisdiction Minutes of Proceedings, 1798 - 1800, State Records N.S.W, X905 – 68, 90

R. v. Hewitt

Court of Criminal Jurisdiction

Dore J.A., **1 February 1799**

[68] **THOMAS HEWITT** charged with the wilful murder of **WILLIE CUTHIE** (a native) was put to the Bar and arraigned on the Indictments.

Plea “Not Guilty”.

No Prosecutor appearing and the native widow of the deceased being incapacitated from giving such Testimony as could be admissible in Law to affect the Life of the Prisoner he was by the Court.

Acquitted.

But being further charged with being an incorrigible Rogue and vagabond and pleading Not Guilty.

**THOMAS SMYTH**, the Provost Marshall being sworn, deposeth that he verily believes the prisoner to be a reputed Rogue and Vagabond and an idle, disorderly Person without any visible way of getting his Living, being frequently at large and found guilty of flagrant cuts of vagrancy in the woods.

**EDWARD COLLINS**, a District Constable, being also sworn deposeth that he’s well known the Prisoner. That he is frequently at large and wandering abroad in the woods, and inhabiting and associating with the natives, contrary to order and regulations and that he had no visible means of maintenance.

Sentenced to receive 300 Lashes in public and at a time when the greatest number of natives can be assembled together to witness his Punishment after which he is to work in the Gaol gang for the Space of Twelve Calendar Months from this day.

[original notes:]

[90] Thomas Hewitt to the first count of the Indictment charging him with wilful murder. pleaded not Guilty.

The Prosecutor at the hearing and the native widow of the Deceased not being Capacitated to give sufficient Testimony to reach the life of the delinquent or substantiate the Count laid in the said Indictment he was by the Court hereupon – Acquitted.

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., X905, pp 323, 329-362 (and see pages 298-320) [1]

R. v. Powell and others

Court of Criminal Judicature

Dore J.A., **15-16 October 1799**. [1]

[323] His Majesty’s Territory called New South Wales.

At a Court of Criminal Judicature holden at Sydney in and for this Territory by virtue of a Precept under the hand and Seal of His Excellency John Hunter Esquire Captain General and Governor in Chief in and over His Majesty’s Territory Called New South Wales on Monday the fourteenth day of October in the Year of our Lord

One thousand seven hundred and ninety and nine For the Trial of such Offenders as should severally and respectively be brought before the said Court.

Present,

The Judge Advocate

Captain Henry Waterhouse Captain John McArthur

Lieutenant John Shortland Lieutenant Neil McKellar

Lieutenant Matthew Flinders Lieutenant Thomas Davies

The Precept being read and the Court duly Sworn the following Prisoners were put to the Bar and severally and respectively Arraigned on the several Indictments preferred against them Namely –

... Edward Powell, Simon Freebody, James Metcalfe, William Timms, and William Butler, for wantonly killing two of the Natives ... now appear to Traverse–

[329] The King v Powell – Freebody, Metcalf – Timms, and Butler

}For wantonly killing two Native Men of this Territory.

The prisoners being put to the Bar.

Thomas Rickerby, being Sworn, Deposeth that on the 19th day of September last Mary Archer came to him and asked him [330] if he had heard of two Native Boys having been killed. He answered he had not, when she replied that such had been Killed the night before, and enquiring of her if she Knew who had Killed them she answered Yes, That John Pearson had told her that Edward Powell, the Constable, Simon Freebody, James Metcalfe, William Butler, William Timms, Thomas Sanburn and Bishop Thompson were all together when they were killed, but that Sanburn, Thompson and Pearson had nothing to do with the murder. That in Consequence of this Information, the Witness, being Chief Constable at the Hawkesbury, went up to Powell's with two more Constables with him namely David Browne and John Soare. That Powell was from home, but in his house were Metcalf, Thompson and (he believes Timms) and Sanburn making enquiry of them if they knew any thing about the two Boys being Murdered they made answer one and all that that knew nothing about it. But that Sanburn said they were as decently buried as any of the white people that were killed by the Natives. The Witness asked said Sanburn if he would shew him where they were buried, who told him no. That on leaving Powell's house he met with Powell of whom he made the like enquiry about the Murder, who said he knew nothing about it, he had killed none of them nor did he know who had. That Powell refused to inform the Witness where the said bodies were buried but on a Search he discovered and with assistance dug them up and left the Bodies laying on the Ground while he went up to the Commanding Officer at the Hawkesbury, Lieutenant Hobby, who went with Mr. Braithwaite and the witness, and the Bodies were examined when the Hands of both the said Boys were tied behind them and a wound through the Body of the smallest of them as if given by a Cutlass and second wound on or about the hip as if given also by a Cutlass. The other [331] Appeared to have been shot through the body by a Musket Ball and that one side of his head and down his face appeared to have been much Cut by a Cutlass. Powell the Constable being sent for he was examined and in the first instance denied knowing any thing of the matter but on being further Interrogated said Powell informed that he thought it was the Governor's orders to Kill the natives where they found them. That Lieutenant Hobby then told said Powell he had given no such orders nor did he believe the Governor had given any to that effect. Powell then answered that it was done at the request of Sarah Hodgskinson the widow of one Hodgskin who had been Killed by the natives about three weeks before that time. That the Witness went to the said widow and asked if it had been her Request who answered It was. That the Bodies

were then buried and five persons taken into Custody hereupon, when Powell one of the Prisoners asked the witness how many he had apprehended and on being told replied there were eight of them and they would all fare alike.

Questions proposed by the Court to this Witness.

You are Chief Constable at the Hawkesbury.

Yes.

Have you Known the natives to have been troublesome in Committing depredations and murders about the Hawkesbury?

Yes he has heard of such things having been done.

Have you not known that after such Outrages Parties have been sent in pursuit of them.

Yes.

Have not the Parties so sent out often Killed some of the natives they were sent in pursuit of.

He has understood they have.

[332] Have you never known the natives to have been seized after having Committed Robberies or perpetrated murder and sent to Head Quarters.

Yes. I remember one Charles who was so secured.

Do you Know what was done with that native.

Set at liberty. I understand so.

Do you know for what Offence that native was Committed.

Yes. I heard for Spearing one Goodall.

Do you know from your own Knowledge or only from Common Report that Charles was the Native who Speared Goodall.

From Common Report.

Did you not hear from Report likewise that it was not him.

Yes. I heard it was not him but that he was in Company with those who did it.

Did you ever hear of the two [deceased] natives in question having been troublesome in parties Committing depredations or murders.

Has heard the Youngest Boy was detected in stealing Corn and was shot at and wounded, and that the eldest was he heard concerned about Killing a Man upon the Race ground but that he believes the said two natives have since lived in habits of friendly Intercourse with the Settlers.

[333] Do you not know that after the natives have committed depredations and even murders that they have been received into the houses of the Settlers.

Yes they have.

Isabella Ramsay being duly sworn Deposeth that about the time the above natives were killed she believes the Evening of the same day the three natives came into her dwelling house at the Hawkesbury with the musket of Thomas Hodgkinson who had been lately killed by the natives in the woods, and delivered up said Musket. That Freebody and another Person then came into the house of the Witness and questioned the natives as to what manner said Hodgkinson had been killed. They in the best manner they could explained he was killed for the sake of the victuals he had with him and that there were three of them in the Killing of him. That the night preceeding [sic] the murder three other natives slept with him. That they passed part of the next day together and toward the evening made a fire and eat, after which the said Hodgkinson and Wimbolt laid them down under the Covering of Blankets that the said three other natives afterwards secured their two Muskets and ut said Hodgkinson and Wimbolt to death with their Waddys. That said Freebody and his Companiion having left the house the former shortly after returned accompanied by

Powell. That soon after the biggest of the natives got up for a drink of water to whom Powell said you shall have no water here you have Killed a Good fellow and you shall not live long. John Pearson a neighbour then came in when the same native got up a second time for a drink of water, when Freebody gave him some water, and Powell said they should be killed for they have killed a worthy good fellow and it will be a pity to see them go away alive. Butler soon after came in to the house of the witness with a bright Cutlass and asked if the natives were there saying what sentence shall we pass on these blackfellows. I will pass sentence myself. They shall be hanged. Metcalf came into the house of Witness [334] with several others, who said we will not Kill them we will carry them out as the means of finding the natives who Killed Hodgskinson. Powell then enquired of the Witness if she had any Ropes, being answered no, said that it was pity they should escape as he understood it was the Governors and Commanding Officers orders that the natives should be killed whenever they could be met. Said Powell then directed Butler to go to his house and bring some Rope. Who went and returned with one Rope saying he could find no more there. When Powell himself went and brought in two other Ropes, and the hands of all the three of the Natives were tied behind them, and all the people who had by this time assembled at her house in great numbers to look out the said Natives. And in about a quarter of an hour after they had left the house the Witness heard the report of two Muskets being fired.

Question from the Prisoners to this Witness.

Relate to the Court in what manner the natives were armed when they Came to your House.

They had each got a Spear, a Womarroo and a Waddy and Hodgskinson's Firelock. That one of them having a Coat Metcalf's which being pulled off a Tomahawk was thereunder Concealed up his arm.

Question from Prisoner Metcalf.

Did I not tell you when I brought the natives in with Hodgskinson's piece that the said three natives had acknowledged sleeping with Hodgskinson in the woods the night before he was Killed.

I recollect something of your saying that they had slept with him either the night he was Killed or the night before but she was so much frightened that she cannot Recollect.

Did not Jonas Archer inform you that the eldest of the deceased Natives was concerned in the murder of the Man on the Race ground.

Yes I have heard him and several others say the same.

[335] Question by Powell.

When I came in and found you alone with the natives in your house did you not tell me that you was glad to see me for you was in fear for your Life.

Yes I was glad to see you come in with the other mean with you for I was in fear for myself and children.

Why did you stand so much in fear of the natives, have you ever sustained any Loss of Injury by them.

We have been Robbed by the natives but from their general Inhuman behavior she was the more afraid of them, and from hearing of the depredations they frequently Committed.

David Browne being Sworn.

Deposeth to have seen the Bodies of the said deceased Natives which appeared to him to have been murdered and he was ordered to take Care of them until they were buried. That the witness lives at the Hawkesbury and the Natives are a very dangerous

set of People and not to be trusted and after a man gives them all he has got they would not scruple to Kill him. That about two Years ago he was bringing water for his stock when one of the natives threw a Spear at him which struck him in the Throat, that in pursuing said native three others came up which rendered it necessary for the witness to return to his home. That the next day a Settler was killed as he was informed. He the witness also Knows of many Robberies and Murders by the natives Committed.

Thomas Lambourne being sworn Deposeth that about Three weeks ago he was at work on the farm of Edward Powell when James Metcalf one of the prisoners came to him with a Firelock on his Shoulder and told him he had been alarmed by three natives on Forrester's farm where he was working, which natives had a [336] musket with them, who delivered the musket to said Metcalf who Carried the same home. That the witness then went to Forrester's house, the selling before described of Isabella Ramsay where the witness found three natives of whom he asked if there were not more of them, who answered there was another Called Major Worgan out upon the Ground. That the witness went down to him and stopped with him about an hour, and returned to Forrester's House about nine or ten in the Evening when the people were coming out of said house with three natives, that hearing a Caution of take Care or you'll be shot, the witness left them. And standing behind a Tree for his own security he heard the Report of two muskets being fired, that he went up to the place from whence said Report came ha saw two natives laying dead being two of the three he had before seen in the hose as abovesaid. That the people talked about Burying them but that he then departed and went about his Business.

Question by the Prisoner Metcalf.

Did not Jonas Archer tell you that the eldest native killed was Concerned in the murder of the Man upon the Race ground.

Yes he did.

By the Court.

What number of Persons do you think were assembled on the above occasion when you saw the two natives dead.

There were more than the Prisoners, there might be Ten, I cannot speak certain.

[337] questions by the Court.

Name any of those that were then present.f

Answer. I cannot.

Where [sic] you not present at the time the two murdered natives were buried.

No I was not.

When you went to the hose of Ramsay and saw the three natives, did you go alone.

Yes I did.

This witness having grossly prevaricated in his Evidence before the Court and having departed from the Examination to which he was Sworn before the Committing Magistrates whereby he connived at being admitted King's Evidence, and verifying no part thereof The Court do Order the said Thomas Lambourne to be taken into Custody and Stand Committed for the next Criminal Court to answer such Charges as shall then be preferred against him.

John Pearson being sworn deposeth That last Wednesday was a month he called in at the house of Isabella Ramsay where he found three natives of whom he made enquiry who had killed Hodgskinson who informed the witness that Terribandy, Major White and others whose names he recollects not. (That Terribandy is the

reputed brother of the eldest native that was Killed) and one of the said natives on being asked by the Witness what they did there said they had brought in the Gun of the deceased Hodgskinson and had given it up to Metcalf. That Freebody and Powell then came in when the Woman expressed herself glad they had come as she was very much [338] Frightened at the natives being there. That the woman and her Children were all at Supper at this time when Timms, Butler and Metcalf with Thompson and he believes Lambourne came to said House. That in the hearing of the Witness Butler (who he thinks had a Cutlass in his hand) Called out "where are these natives, leave them tome I'll soon settle them". Butler then asked for Rope, but none being in the house Powell said if you will go over the way you will find two Ropes upon the Dogs. Butler then went out and returned with some Ropes. The witness went out to Cut some weed and on his return into the house saw the three natives with their hands tied behind them and some Rope round their Necks. That the said Natives were then taken out by several Persons namely Timms, Butler, Metcalf, Freebody, Powell and Thompson. That the witness remained in the house where he was accustomed to sleep and to Keep the woman Company. That about a quarter of an hour afterwards he heard the Report of two Guns fired, soon after which a Person he believes to have been Timms returned to the house and made enquiry for a Spade with which he went away. That the witness retired to rest immediately afterwards as also did the woman and he heard no more of them. The witness further deposes that one of the said Natives in the pulling off a Coat dropt a Tomahawk which had been secreted in the sleeve there up his Arm.

At Three o'Clock the Court adjourned until Tomorrow Morning at Ten in the forenoon.

[339] Wednesday 16th October 1799. The Court met at Ten o'Clock pursuant to Adjournment.

Rex versus Powell and others } Continued

Lieutenant Thomas Hobby New South Wales Corps being duly Sworn deposeth that he was Commanding Officer at the Hawkesbury when Thomas Rickerby Chief Constable there applied to him respecting a murder Committed on teh Body of two Natives, requesting that the witness would go with him to view the Bodies which he accordingly did and in the way to the place where they were the witness met with Mr Roberty Braithwaite who he asked to accompany him and they proceeded together with said Rickerby, and viewed the bodies of two Male Natives on the younger of which they discovered one wound near the left Breast, and another in or about his back which appeared to the Witness to have been wounds made by a Cutlass. On the other Native near the Jaw the head was nearly severed from the Body. That the hands of both said natives were tied behind on the back of each of them.

The witness sent for Powell one of the Prisoners and examined him respecting the said Murders who denied fro some time any knowledge thereof, but said Powell acknowledged he was present but did not Kill the said Natives. That Metcalf was also questioned by the witness who answered him to the like effect as Powell had done. That on the return home of the witness he met Freebody another of the Prisoners who he also examined but does not recollect particularly what he said. The witness further deposeth that Powell told him that he understood it was the Commanding Officers orders also the Governors that all the Natives should be killed. The witness replied he had never given such Orders nor did he believe the Governor had given any to that Effect, and that Powell said it was done at the instigation of the Widow Hodgskinson.

[340] Question by Powell

What orders did you give to a party of Soldiers who went out to bury the Body of Thomas Hodgskinson who had been killed by the Natives.

My orders to the Soldiers were to go out with the Men who were going out to bury the Bodies of Hodgskinson and Wimbolt (who were murdered by the natives about two months since) "That if they fell in with any Natives on the Road either going or returning to fire in upon them." And my reason was that having been morning informed that the said Hodgskinson and Wimbolt had been most inhumanly murdered by being dreadfully beaten and Mangled, and in consequence of Serjeant Goodal being badly speared by the natives directions received from his Excellency Governor Hunter who he consulted on this Occasion at Sydney, he returned to the Hawkesbury with Orders to act discretionally against the Natives. [Alternative version in margin:] of Serjeant Goodals having been badly speared by the natives, he waited on the Governor to receive his directions who desired him to Act discretionally against the Natives, that he then signified to the Governor his Intention that if the Natives should commit any more depredations to send out a Party to kill five or six of them

Question by the Court. What were your Reasons for giving such Orders and by what authority did you give them.

Answer. About two months since or thereabouts I was informed by different people that it was the intention of the natives to Come down in numbers from the Blue mountains to the Hawkesbury and to murder some of the white People and particularly some of the Soldiers. That a day or two after receiving this Information one Smallsalts came to the Witness and informed him that on the day before he had been attacked by the natives on the Road between Parramatta and the Hawkesbury and that had he not been armed with a loaded musket and a Brace of Pistols he should have [341] been murdered as the Natives have one or two Spears at him. The witness then came down to Sydney and waited on the Governor making him acquainted with these circumstances. That the day following Andrew Thompson a Constable from the Hawkesbury came down to Sydney and informed the witness that Serjeant Goodall a Marine settler on the Road between Parramatta and the Hawkesbury who being at work on his own Grounds was attacked by several natives and dreadfully wounded inasmuch that he could not be expected to Live. The witness again waited on the Governor with this Information who appeared much displeased at the Conduct of the natives. The witness who had been subpoenaed down to Sydney on a Trial, then observed to the Governor that the sooner he returned to the Hawkesbury he thought the better. The Governor was of the same opinion. When the witness asked the Governor on what was best to be done if the natives continued to Commit such enormities, who answered that something must be done. On which the witness signified to the Governor his Intention that if the natives should still continue their violent outrages of sending out a Party of the Military to kill five or six of them wherever they were to be found. Whereupon the witness received the Governor's directions to act discretionally against the natives and he left it entirely to the witness. That the next morning he left Sydney and returned to the Hawkesbury where he arrived on the second day. About Ten o'Clock on the Evening of the Day of my arrival there Corporal Farrell called upon him with the Information that he knew where to take the natives that had wounded Serjeant Goodal who was then reported to be Dead. The witness then ordered said Corporal to take a Soldier with him and go in pursuit of them immediately, and desired the natives might not be fired upon unless they made resistance, in which Case to bring them in Dead or alive or words to that Effect. The next morning said Corporal [342] returned bringing with him a Native

called Charley which native the witness sent down under a Guard to the Governor. On the return of said Guard the Corporal and one of the private Soldiers namely Henry Lambe came to the witness and informed him that the said Native was according to Orders taken before the Governor, who expressed himself in the hearing of the Guard of Soldiers that he could not take upon himself to punish the native in Cool blood but that the Commanding Officer at the Hawkesbury should have punished him upon the Spot where he was taken.

By the Court.

Do you know that the native you ordered to be sent into Sydney was concerned in the wounding of Goodall.

I received Information from Corporal Farrell that said Native was concerned. That I then went to the Native who denied wounding Goodall but that he was present and offered to take me or any other person as I would send to the Native, who did, known by the appellation Major White, which I declined from supposing that this offer was made only to afford him an opportunity to make his escape.

Did the settlers make any representation to you on the discharge of the said Charley the native.

Yes, many of them said they were not safe in their Houses neither did they consider the Crops secure upon their Grounds and that said Native was a great Savage and had been concerned in murdering a Person on the Race Ground and supposed to have been concerned in other Murders.

[343] Question. When you sent a Party of Soldiers out in pursuit of the natives were they accompanied by Settlers or any other description of Persons.

Yes they were and I believe by several.

Did you when you gave orders to the Party to go out and shoot any of the natives they should meet with consider these orders extending to the Settlers or others that accompanied the Party.

Yes I did upon that Excursion only.

Are you positive that your orders were so explicit as that the whole Party understood they were only to attack the Natives whilst on that Excursion.

The orders I delivered to the Serjeant were, but it's possible they might be misunderstood.

Do you know that any of the prisoners now arraigned were present on the above Party.

I do not positively know but have reason to suppose they were from a remark made to me by Metcalf that had I seen the bodies of Hodgkinson and Wimbolt that I should have thought nothing of the natives being put to death.

You mention a Resolution of the Natives to come down in numbers and kill several white people, particularly Soldiers. Have you any Knowledge why they formed such a Resolution.

Yes. I have heard it was in consequence of a native woman and Child being put to death by a Soldier called Cooper.

Did you hear by Report or do you Know that said Cooper was the Person who put said Woman and Child to death.

[344] Answer. I heard it from Report by Mr Braithwaite.

Question. Do you know that any violence has ever been offered to the Natives or injury done them by the white men, without previous violence committed by the Natives upon the white People.

No I do not Know of any violence committed on the Natives at the Hawkesbury or elsewhere without provocation being given.

Since you have resided at the Hawkesbury pray how many white people have been Killed by the Natives.

Two killed, one wounded so as to be left for dead, one attacked and repeated Thefts.

How many Natives have been Killed by white People.

Two since my Command at the Hawkesbury, Viz. Two Months.

Robert Braithwaite Gentleman being Sworn deposeth – That on or about the 20th. September last, he accompanied Lieutenant Thomas Hobby and Thomas Rickerby to the bodies of two male natives who had been put to death. That the hands of both were tied behind them. The wounds upon the Younger of them were one about the right Loin and another about the Left Breast which appeared to the witness to have been given by a Cutlass. And upon the other of them a large wound appeared about his Chin and the appearance of a Musket ball wound about his right breast. That being informed Powell one of the Prisoners was Concerned in Killing said Natives the Witness examined him who denied any knowledge thereof, but on being further pressed by the Witness who had Killed the Boy, Powell answered it was so dark he could not see the Person. Being asked the like question as to the death of the other Native said Powell's Reply was the same in effect to the former. The witness observing that it was a very cruel way of Killing them even had they been detected in Committing [345] any Act of Depredation. Powell replied had the witness seen the Bodies of Hodgskinson and Wimbolt how they had been murdered by the Natives that he would not have thought it so inhuman and Powell further informed the Witness that the said natives were killed at the desire of the Widow Hodgskinson.

Question by the Court. How long have you resided at the Hawkesbury.

About Twelve months.

Since your residence there how many white people have been killed by the Natives

I recollect four men to have been killed and Goodall being very desperately wounded by them and that a several of them of the witnesses was attacked by several natives one of which he shot in his own defence after being Robbed of a Kangaroo he had Killed.

Pray how many natives have been killed by New white people since you have lived at the Hawkesbury

About Five including the one killed by my Servant.

What is the state of security or danger of the settlers of the Hawkesbury with respect to the Natives.

I conceive the property of the Sellers on the front farms to be and safely secure in popular situations. Those of the back farms and above the Creek in remote situations are exposed to great danger from the natives and he thinks the persons of the people are insecure both on these farms and when they may be travelling on the Roads and the witness know the several [346] single persons have been attacked on the Road by the natives although such persons have been armed.

David White being Sworn Deposeth That on the Evening: the above two natives in Question were said to be Killed he heard some natives crying out and heard the report of a Musket and in about two thirds of a minute afterwards he heard a second report of a Musket fired that in Consequence thereof he went down to the spot pem whence he heard such shots and calling in all the house of Widow Hodgskinson who was not at home at the time he waited when the said woman came in accompanied by Simon Freebody and Mr Timms when the two latter informed the witness they had that two natives were killed, Simon Freebody told the witness that that Powell had fired at a

native that Butler was holding by a Rope but round his neck but let him escape and that one other native the said Simon Freebody declared to have killed himself by thrusting a Cutlass into him and the third native who was held by Timms Metcalf shot through the Body.

Question by the Prisoner Powell.

Was the witness at home when he heard the Natives Cry out

Yes I was

At Half past Two o'clock the Court adjourned until tomorrow morning Morning Ten o'clock.

[347] Thursday seventeen

October 1799: at Ten o'clock the Court met pursuant to adjournment, and proceeded on the trial of Freebody and others.

Continuation.

Jonas Archer being duly Sworn deposes that about six weeks ago a native called Yellowgowy came to the house of the witness who asked him who of the native had Killed Thomas Hodgskinson and Wimbo when the said native answered a native called Major White had killed him and mentioned the name also of one other native which the witness does not remember and describing the manner in which said murder was Committed said that said White and other native Run their Davel (a sought of spear) into said Hodgskinson and Wimbo the next day the elder of the two natives that were killed (as in Formen Evidence named) came to the witness who told said Native that him who told the said native that said native White the native had got the Gun belonging to deceased Hodgskinson, and desired him to go and get it. That the witness went to the widow of the said Hodgskinson and told her that she would get the Gun in a few days, and the said Native Boy accordingly as the witness Hath been informed brought in the said Gun.

Question by Court. Did you understand from the Native Yellowgowy that the native Major White attended the deceased Hodgskinson and Wimbo as friends in the woods.

Yes.

Yellowgowy said that White met the deceased Hodgskinson and Wimbo in the woods and asked them if they had got any Pheasants being answered No they made a fire and sat and the native made another being Evening about Sundown which the natives invited them to do disclosing [348] they would get Pheasants the next day that in the night the said Natives put them to death as before stated.

What was the reason you suppose that the said natives put them to death.

Possibly for the sake of their provisions or because Wimbo had the daughter of the Comrade of said White living with him.

Do you mean to say the said natives daughter was forcibly detained by Wimbo.

No.

I know she might have let him had she Choused.

Did you go out with Party who went to Bury the bodies of the deceased Hodgskinson and Wimbo and in what state did you find them.

Yes I did go out, and saw said two Bodies naked covered by wood and both were speared in the Bodies and otherwise mangled their Cloaths provisions and Arms and Blankets were taken from them.

Did you Personally know this native Called Major White.

Yes I knew him well and he was under engagement to accompany me in the woods at the time he killed Hodgskinson and Wimbo.

Did you Know of what tribe the two natives who were killed belonged.

I have often seen them with Major White and he believes one of them did belong to the tribe indeed they have often been together on my farm

[349] Was the deceased Hodgskinson on friendly terms with the Natives.

Yes I think he was he always has seen him treat them kindly by harbouring them and feeding Reece in his House.

Do you know what orders the soldiers had and did you feel yourself authorised to do when out on that the excursion to bury the deceased aforementioned.

I know not what orders the soldiers had in Particular but understood it was to Kill any natives the Party could meet with and that was my Intention.

Did you understand the orders to kill the natives were to be enforced after the above expedition.

Yes I did nor should I have thought myself doing wrong by killing any of the natives afterwards.

What do you know of the Character of the two Natives that were Killed and of the one who ran away.

The one who ran away stole fowls from me and one of the deceased stole Corn from my Barn and that the other being the eldest he has been informed was informed was Concerned in murdering informed the witness that his brother had murdered a man upon the Race ground.

Do you know how many white men have been Killed by the natives during the time that you have lived at the Hawkesbury.

[350] I have five or six Years at the Hawkesbury and to the best of my Recollection Twelve white Persons have been put to death by the natives.

How many natives do you recall being Killed by the White Persons.

About Twenty to the best of my recollection.

Are not the settlers or their Men in the habits of taking the women from the natives and that the native men are presented taking them away through fear of their fire army.

In two Instances I remember lately but cannot say weather they were women were detained by force but they were taken away against the Inclination of their native men and I know that said two women were Comon to the White men from Choice.

Here the Evidence Closed on the part of the Crown.

The prisoners produced a Defence in writing at which the following is a Copy\_

-----  
 William Fuller the first witness Called on the part of the Prisoners being duly Sworn says that he lives resides at Richmond a free man and lives by his labor about three That sometime before Wimbo the deceased went into the woods the witness lent him a Blanket [351] and one of the Blacks little Jemmy one of the natives the eldest [?] that were Killed with several other native men one women the Gin or wife of said Jemmy had us which woman who severally came to the house of the witness and had wrapped round her a blanket which he well knew to be the same he had lent to the said Wimbo and the witness was desirous of taking the said Blanket which was refused and the woman and other natives all ran away from the house and the Blanket yet remains among the natives.

By the [?]

of the prisoners: Did you see this Blanket in the possession of the natives before the said Hodgskinson and Wimbo two natives were said to have been killed.

Yes I did but I cannot say as to the time but that it was about a fortnight before the said Hodgskinson and Wimbo were known to have been killed by the natives.

Was you with the Party of soldiers and others who went out in pursuit of the natives and to Bury the two Bodies of Hodgkinson and Wimbo.

Yes I was.

Were any of the Prisoners of that Party.

Yes two Metcalf and Freebody.

How far did you Consider yourself at liberty to act against Natives if you met with any.

To shoot them if I could.

[352] suppose any natives should have come into your farm after the above expedition would you have shot them.

If I had seen any I suspected to have been Concerned in the number murder of said Hodges and Wimbo I certainly should.

William Goodall being Sworn. Deposeth that about six weeks ago he was working on his Grounds when a Party of natives about twelve in number came and without the smallest provocation alarmed him by a desperate attack with their spears and also brutally beat him with their waddies after wounding in the breast and in two places on his back with three spears and had not the witness ran from them they would have killed him on the spot. That among their number of natives he knows one who is called Charley. That on the witness making his escape with a spear sticking in his Back the said natives pursued him even to the door of his house. That the said Charley was afterwards apprehended at the Hawkesbury as one of the Prisoners who had thus wantonly attacked the witness and was escorted to Sydney by a Party of soldiers as a prisoner to his Excellency the Governor and when his Excellency (as the witness was informed by the Corpl of the Guard) examined said Charley who was released liberated without any punishment.

Before the prisoners at the Bar were brought to Trial did you think yourself at liberty to retaliate on the natives for the Injury you had received

Yes I did

What is your Opinion now since these prisoners have been put on the Trial.

I wish to be informed after this attack on my life how I am in future to act.

[353] Did you not serve in the detachment at the Hawkesbury as a Sergeant in the Military.

Yes I did upwards of two Years and that I was discharged two years ago last April since which I have lived as a free Settler.

Do you recollect during your Service at the Hawkesbury natives committing any murders Robberies or other outrages

I do several some I particularly well remember

What steps were taken to punish such natives

There were Parties of soldiers frequently sent out to kill the natives but being the senior Sergeant sent there I had the Care of the Stores and did not go out with any detachments myself.

From whom did you receive your orders from time to time at the Hawkesbury

I received my orders in unity from Captain John McArthur at Parramatta, and which were issued in consequence of a number of murders about that time committed by the natives.

Do you not know that the like orders have been after repeated by the Offices Commanding detachments at the Hawkesbury

Yes I do

Was you not Sent to the Hawkesbury for the express purpose of defending the settlers from the attacks of the Natives in consequence of the Representations from the

Settlers that they use they were in danger of being murdered by the natives.  
I was

[354] Have you any knowledge of why the Navies attacked you in Plan.

Nine

Peter Farcell Corporal in the New South Wales Corps being duly Sworn Deposeth. That on the 7th day of last month about nine o'clock at night the witness was in the Barracks at the Hawkesbury when Joseph Phelps a settler came in and reported there was a Party of natives near his farm who were known to have been present at the spearing of Goodall and that said Phelps told the witness he came in for the purpose of informing their Commanding Officer there of being under some alarm for his property he requested a Party might be sent out to drive them away. The witness then waited on Sergeant Thomas Hobby the Commanding Officer who told him to take a soldier with him and the said Phelps who was also armed with a Firelock and they went to the house of one John Burne where the witness and his Party apprehended two natives the one called young Charley and the other called Cappy from the Character the witness had heard of the former he just secured him and with the other native bids them both away on our return to the Barracks the native Cappy effected his Escape in which the witness fired at him and has since been informed wounded him. Charley was brought into the Barracks and the next day the witness was ordered to hold himself in readiness escort to a party to Sydney with said Charley with a Party to Sydney by his Commanding with a letter from Lieut Hobby to his Excellency which he also dilated that his Excellency made enquiry of the witness Corporal of the Guard who he [355] Hodges there, the witness answered, that it was a native who was known to have been at the Spearing of Goodall and remitting several other barbarous depredations. Well says the Governor what am I to do with him why did not your own commanding Officer at Hawkesbury do something with him. The witness answered his Excellency he supposed it was from a wish to make a more public example of this Native. The God. replies it was not in his power to give orders for the hanging all the shooting of such Ignorant Crealurey who could not be made sensible of what they might be guilty of therefore could not be treated according to our Laws. The witness then requested to know what was to be done in that Case when the Governor told the witness that immediate relations should be made on the spot or words to that effect as that was the only mode he could think upon. That some Bystanders observed that was impossible for the natives took advantage the time and place. Then replied his Excellency as soon as they can be caught. The Governor then admonished the said native Charley as to his future Conduct and ordered said Native to be discharged and as the witness is informed ordered said Charley to be taken up to Mr Cumming at Parramatta with where he has lived. The witness returned to the Hawkesbury and made report verbally to his Commanding Officer of what had been done which he publicly also repeated among the settlers. The witness further says that the Governor ordered said native under the Care of Mark Flood to be taken up to Mr Cummins with upon he had long lived as said to be further admonished

The Court at Half past Three o'clock

adjourned until ten o'clock tomorrow

Ten o'Clock

[356] Friday 18<sup>th</sup> October 1799

The met at Ten o'clock pursuant to Adjournment

Rex v Powell &c } Prisoner Defence Continued

John Tarlington being sworn Deposeth \_ That within a few days before the man upon the Race ground was killed but he cannot specify the time in Plan the witness who

resides near Toongabbie about two hours walk from the natives resort about the Hawkesbury and the Creek on Sunday morn: two male natives came to his House one of them called little Charley and the other McNamara, the witness welcomed them into his house and the freeman his servant also with his Master shook hands with said Natives who left their Spears outside the house, and asked for Bread which the witness gave them they then asked for meat which the witness said bye bye as it was then dressing. Having suspicion of more natives coming the witness went out to lock and saw four coming toward the house walking two and two abreast one the witness knew to be called Major White and one other Lule Geo: who was the youngest of the two Natives since killed said to be killed by prisoners the other two he knew also to be called Terribandy and Jemmy the latter the elder of the two natives killed as aforesaid. The witness also welcomed the said four natives into his house at which time the meat and cabbage was taking up, which the witness shared among them and gave them more than they could Eat as they left apart. Lule Charley getting up for some water stepped out of the door who the witness followed to see what he was about when he saw more natives twelve of Fifteen approaching toward his house. The witness welcomed them into the house also and they left their Spears at the door same as the others had done [357] His wife and Freeman Servant gave to them the remainder of the meal and victuals that had been left. That three of the former natives namely Geo: Jemy and Charley asked the witness for Melons who took them to the Melon bed leaving the other natives in the house with his wife and freeman and whilst said three natives were eating Melons on the bed in the garden where they grew native Jemmy went some little distance from the melon ground and shooting out something in the native dialect which the witness did not understand about Twenty or Thirty natives thereupon immediately Came out of the Bush and saluted the witness friendly. That the natives then in the house hearing the voices of the Melon bed Came out to join them and the freeman servant to the witness followed them out, when the natives dispersed themselves about the Ground some taking Corn others Melons. The witness hearing a voice saw a white man who came to him and they saluted each other the strange white man asking the witness if his name was not John Tarlington to which he replied yes and your name is Nicholas Redman if I am not mistaken, I suppose continued the witness you want to see Joseph Molony who said yes then said the witness he will be here presently soon after said Joseph Molony came up to the witness before he went to his acquaintance saying to the witness "John what brought all of these natives here". That the natives then asking for more bread and none being in the house the wife of the witness went out to get some accompanied by Charley the native in a few minutes after her leaving the house the native Terribandy threw a spear at the witness freeman Joseph Collins which wounded him so desperately that he died in a few days after they then attacked the witness and wounded him in three places with spears besides beating him with waddies. That he was fortunate [358] enough to escape and saved his life by concealing himself in a loss that the youngest of the natives called Lule Geo: said to be put to death by the prisoners threw a spear wantonly through his arm and a wound he received in his side was given him by Jemy the other native said also to be killed by the prisoners. That Nick Redman was next barbarously murdered and mangled and Joseph Molony was also severely wounded in endeavouring to escape. That the said natives then plundered the house and displacement of his stock and every kind of property he had. That when the witness thought they were gone he came from his concealment and went in quest of his wife who he found had been severely beaten by Charley.

Pty the Court } Were the two natives supposed to be killed by the prisoners concerned in the murder of N Redman

Yes they were

How long is it since the murders happened

About 18 months ago

How old do you suppose the native called Lule Geo: might then be

About the 11 or 12 years of Age but I cannot speak to any certainty they are so deceiving in their age, Jemmy appeared to be 15 or 16 years old.

Have you heard of any other Inquiries committed by said Charley upon the white people since

I heard of Goodall being wounded by said Charley

How did you hear said Charley had wounded Goodall

By Report

[359] Henry Baldwin being duly Sworn

Question by the prisoners

Relate what Inquiries you have received from the two natives said to have been killed by the Prisoners

Answer: I detected them with others stealing my Corn and I have frequently been Robbed by Men and Natives

William Bladey duly Sworn. Depoeth that about six weeks ago he was out Duck shooting and met a native Called Major White and one called the young Jemmy the latter is said to have been killed by the prisoners, and a third native name unknown they all came up to the witness and were armed with Spears. White enquired of him if he had got any Ducks who answered no and asked said White why the natives were angry with the white men who replied that they were angry with the white men and particularly with the Soldiers, when White shewed an intention of throwing a spear at the witness which he poised towards him, who thereupon stepped back and Guarded himself against a Tree, when he discovered another Party of natives making up to him the first of whom he well knew to be called Major Worgan, of whom he asked why the natives why the natives were angry with him the witness. When Worgan Replied they were not angry with him for he was a very good fellow but that the Soldiers were very bad. The foremen Party now joined the latter and they all went off a little distance from the witness seemingly to consult together after which the native Charley returned to the witness and asked him if he was going home who through fear said no, the said natives than all departed together. The witness soon after went home where he was informed by his wife the same natives seventeen in number and many of whom she knew and described to her Husband had Robbed and plundered the house of the witness of every thing and they thought proper to take away with them

Question by the Court} Do you know the reason why the natives are so very angry with the white men and the Soldiers

Ans: No \_ accept by Report I have heard of a native woman and child being killed by a Soldier but do not know the reason why they were so killed.

Question proposed by Prisoners to Lieut Neil McKellar one of the members of the Court.

Pray Sir when you Commanded at the Hawkesbury what orders did you issue against the natives for committing depredations on the Settlers

To destroy them wherever they were to be met with after their being guilty of Outrages except such native Children who were domesticated among the Settlers.

Was that Order ever Countermanded since

Not during my Comand at the Hawkesbury not since to the best of my knowledge

By the Co Cap:

McArthur } By what authority did you give those Orders

By verbal orders I received from the Governor. I do not recollect receiving any in writing to that effect

By Lieut Shortland

When you was Relieved at the Hawkesbury did you leave those Orders with the Office who Relieved you

I informed him generally how I conducted the Comand

By Lt Flinders

From your never Contradicting the Orders to destroy the Natives in Form. Did you consider the Orders for the destroying them to continue in force.

Certainly \_ otherwise I should have countermanded them, but it was understood the natives were not to be injured except in Retaliation for any Outrage they might have recently committed

[361] John Francis Molloy being duly Sworn \_ Depose that there being no regular Surgeon at the Hawkesbury he was appointed to act. There in that capacity and that he knows in the Course of his practice for Four Years and a half Twenty six white people have been killed by the natives and thirteen wounded on the banks of the Hawkesbury and that several of them were killed and wounded when defending their property against the Attacks of the Natives.

The prisoners addressed the Court and stated that they had no other Evidence to call but as such as would tend to Corroborate what had already been produced relating to the general offensive conduct of the Natives they therefore declined troubling the Court with the examination of any further witness although there are many at hand ready to come forward.

The Court being cleared to deliberate on the Verdict and being Reopened the several Prisoners were put to the Bar and informed that the Court disapproving of the killing the Natives Find them severally Guilty sev: y

Of Killing two Natives

But reserve this Case by special Verdict until the sense of his Majesty's Ministries is known upon the subject the prisoners will therefore be enlarged producing two sureties to be bound in one hundred pounds each and themselves individually in £200 each Personally to appear to abide by such Decisions as his Majesties Ministers at home may think fit to make on the Case so Reserved as aforesaid. The Court disapproving the Conduct of Powell as a Constable do order him to be suspended.

At half past Three o'Clock the Court disposed.

[362] Captain Henry Waterhouse That the prisoners are severally Guilty of Murdering two Natives without provocation on the part of the natives. Captain Waterhouse adds that by his opinion he means not to affect their Lives because it is the first instance of such an Offence being brought before a Criminal Court and therefore the prisoners were not aware of the consequences of the Law.

Lieut John Shortland That the prisoners are severally Guilty killing two natives in a deliberate manner without any provocation on the part of the natives at the moment.

Lieut Matthew Flinders That the prisoners are severally Guilty of wilfully and Inhumanly killing two unresisting natives who were not in any Act of Hostility or depredation

Captain John McArthur

Lieut Neil McKellar

Lieut Thomas Davies

The Judge Advocate } That the prisoners are severally Guilty of Killing two Natives  
Opinion as to the Sentence -

|                          |                             |
|--------------------------|-----------------------------|
| The Judge Advocate       | The Case Specially Reserved |
| Captain Henry Waterhouse | Corporal Punishment         |
| Lieut John Shortland     | Corporal Punishment         |
| Captain John McArthur    | The Case Specially Reserved |
| Lieut Matthew Flinders   | Corporal Punishment         |
| Lieut Neil McKellar      | The Case Specially Reserved |
| Lieut Thomas Davies      | The Case Specially Reserved |

Note

[1] The record of this case appears in two places in the Minutes of Proceedings, in different handwriting. The version we have chosen contains the full text. The other version omits a large part of the evidence, apparently due to a copying mistake made in 1799. Apart from the omission of some of the evidence in the second version, the two are very similar, with only minor differences of expression. Occasionally we consulted both versions to help in resolving problems in the handwriting. One or two words in brackets are taken from the other text to clarify the meaning of the transcribed text.

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121